IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9876 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL NAROTTAMBHAI RANCHHODDASTHROUGH LEGAL REPRES

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/10/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner challenges the judgment and order dated 5th September, 1991 passed by the learned Gujarat Revenue Tribunal in Revision Application No. TEN:BA:261

of 1989.

3. The petitioner was a tenant of land bearing Survey No. 1035 admeasuring 1 Acre 8 Gunthas and land bearing Survey No. 1036 admeasuring 1 Acre 16 Gunthas situated at Mehsana which belonged to one charitable trust - Shree Hanuman Sanstha. Upon enactment of Section 88-E of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act'], the petitioner, on the specified date [i.e., 15th November, 1969] became deemed purchaser of the said lands and the provisions of Section 32 to 32-R [both inclusive] became applicable. Since then, pursuant to the proceedings under Section 32-G of the Act, by order dated 30th November, 1971 made by the Mamlatdar & Agricultural Lands Tribunal, the petitioner was declared to be the owner and the price of the lands was determined. The ownership of the petitioner of the said lands was declared to be of `restrictive tenure' subject to Section 43 of the Act. The said order in so far as it made the petitioner's holding to be of restrictive tenure was challenged by the petitioner in Tenancy Appeal No. 15 of 1988 before the Prant Officer. The Prant Officer, Mehsana by his order dated 15th October, 1988 held that since the amendment to Section 43 of the Act, the petitioner's holding of the said lands became subject to the restrictions envisaged under Section 43 of the Act. Feeling aggrieved, the petitioner preferred the above revision application before the Revenue Tribunal, which, by the judgment and order dated 5th September, 1991 confirmed the order of the Prant Officer, Mehsana. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Vyas has relied upon the judgment of this Court in the matter of Motibhai Nathabhai v. Trustee of Ramji Mandir [15 GLR 18]. He has submitted that by the said judgment, this Court has held Section 88-E of the Act to be prospective in its operation and similarly amendment in Section 43 made under the Gujarat Act XXI of 1987 shall be held to be prospective and only those acquisitions of land under Section 88-E which are effected after the effective date of amendment ie., on or after 20th April, 1987 shall be subject to the restrictions contained in Section 43 of the Act. However, admittedly, the petitioner had purchased the lands in the year 1971 and the petitioner's holding of the said lands shall not be affected by the restrictions contained in Section 43 of the Act.

Before I deal with the argument advanced by Mr. Vyas, it shall be fruitful to discuss the relevant law.

Section 32 of the Act provides, inter alia, that on the first day of April, 1957 [tiller's day] every tenant shall be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon, on the said day, the land held by him as tenant. Section 32F of the Act provides for a right of tenant to purchase the land where landlord is a minor, or a widow, or a person subject to any mental or physical disability. Section 32G of the Act, inter alia, provides for the procedure to be followed by the Tribunal for determining the purchase price of the land. Section 32I of the Act provides, inter alia, that the sub-tenant shall be deemed to have purchased the land on the tiller's day. Section 32O of the Act provides, inter alia, that in case of tenancy created after the tiller's day, the tenant cultivating personally shall be deemed to have purchased the land on the date of expiry of one year from the commencement of such tenancy from the landlord, the land held by him. Section 43 of the Act [prior to its amendment by Gujarat Act-XXI of 1987] provides, inter alia, that no land or any interest therein purchased by tenant under Section 17-B, 32, 32F, 32I, 32O or sold to any person under Section 32P or 64 of the Act shall be transferred or shall be agreed to be transferred without previous sanction of the Collector and except in consideration of payment of such amount as the State Government may determine. Since its amendment by the Act of Gujarat-XXI of 1987 on and from 20th April, 1987, the lands purchased by a tenant under Section 32U, 43-1D or 88E have also been included in Section 43 and have been made subject to the restrictions contained in Section 43 of the Act. Section 88B of the Act, inter alia, exempts the lands which were the property of a Trust for an educational purpose, a hospital, Panjrapole or Gaushala from the application of the provisions of the Act mentioned in the said Section. Section 88E of the Act was inserted by the Gujarat Act-XVI of 1969. The said section provides that with effect on and from the specified date lands which are the property of an institution for public religious worship shall cease to be exempted from those provisions of the Act except sections 31 to 31D [both inclusive] from which they were exempted under Section 88B and all certificates granted under that section in respect of such lands shall stand revoked. Sub-section (2) thereof provides that in case of tenancy subsisting immediately before the specified date, the tenants shall be deemed to have purchased the land on the specified date and the provisions of Section 32 to 32R [both inclusive] shall apply. Thus, the lands which were earlier exempted from the rigours of the Act

under section 88-B of the Act have been subjected to the same rigours under Section 88-E of the Act.

I see no substance in the contention raised by Mr. Vyas. In the matter of Motibhai Nathabhai [Supra], this Court held that Section 88-E was prospective in nature so that it would not affect the proceedings which were initiated on the basis of exemption granted under Section 88-B of the Act. The Court further held that those of the landlords who had acquired exemption under Section 88-B of the Act but had not initiated action for terminating the tenancy shall be hit by Section 88-E of the Act. In other words, Section 88-E was held to be prospective only to the extent that it would not affect the pending proceedings. That is, in case of a land where exemption was granted under Section 88B of the Act but no proceedings for termination of tenancy were initiated, such exemption would stand revoked on the effective date ie., 15th November, 1969 under Section 88E of the Act. Section 43 of the Act contains restrictions against transfer of lands acquired under the provisions referred to in the said section. Prior to its amendment by Act of 21 of 1987, the lands purchased by a tenant under Section 17-B, 32, 32-F, 32-I and 32-O or sold to any person under section 32-P or 64 were made subject to the restrictions contained in the said section. After its amendment by the Gujarat Act No. XXI of 1987, the land purchased by a tenant under Section 32-U, 43-1D and 88-E are also made subject to the restrictions under Section 43 of the Act. In my view, only construction that can be put is that if a tenant is deemed to have purchased a land under Section 88-E of the Act and transfers such land on or after 20th April, 1987, such transfer shall be subject to restrictions contained in Section 43 of the Act. No other construction is possible because all lands which were of an Institution for public religious worship were deemed to have been purchased by the tenant on and with effect from the specified date ie., 15th November, 1969. All such tenants became the deemed purchasers of the lands in their possession on 15th November, 1969. If the argument of Mr. Vyas were accepted, all lands purchased under Section 88-E prior to 20th April, 1987 should be considered to be of old tenure lands. In that case, inclusion of Section 88-E in section 43 shall become nugatory since all such lands are deemed to have been purchased on 15th November, 1969 and no land can be said to have been purchased under Section 88-E of the Act on or after 20th April, 1987. Necessarily, therefore, inclusion of Section 88-E in section 43 of the Act is intended to govern the transfer of land on and from the date of the amendment of the said

Section, ie. 20th April, 1987, which under Section 88-E of the Act the tenant is deemed to have purchased on 15th November, 1969, irrespective of the actual date of such purchase and payment of price thereof. In my view, therefore, the authority below as well as the learned Tribunal are right in holding that since 20th April, 1987, the lands purchased by the petitioner under Section 88-E of the Act are subject to the restrictions contained in Section 43 of the Act.

In view of the above discussion, the petition is dismissed. Rule is discharged. The parties shall bear their own costs.

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Prakash*